

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NICOLE BRIGGS,

Plaintiff,

v.

AMERICAN LASER CENTERS OF
VANCOUVER, LLC a/k/a ALC OF
VANCOUVER, LLC, a Washington Limited
Liability Company, RAYMOND PEARSON,
KEVIN CLAYVILLE, R&K ALC
MANAGEMENT, INC., an Oregon
corporation, and KIM PEARSON,

Defendants.

Case No. C07-5065RBL

ORDER

THIS MATTER comes on before the above-entitled Court upon Defendants' (Amended) Motion to Amend Answer to Add Counterclaims and Affirmative Defense [Dkt. #29].

Having considered the entirety of the records and file herein, the Court finds and rules as follows:

Defendants seek leave to amend their answer to add a counterclaim alleging conversion and the after-acquired evidence affirmative defense. Under Fed. R. Civ. P. 15(a) "leave [to amend] shall be freely given when justice so requires" and should only be denied upon a showing by the opposing party of undue prejudice, bad faith or dilatory motive. *Forman v. Davis*, 317 U.S. 178, 182 (1962). Plaintiff alleges that defendants were aware of the grounds for their proposed amendments months ago and would be prejudiced by the amendments. Defendants point out that the failure to move to amend previously was not due to any bad faith

1 or dilatory motive, but rather is the result of inadvertence. The Court notes that the discovery cut off date is
2 November 26, 2007.

3 What plaintiff is essentially asking is for the Court to prospectively rule on summary judgment that
4 defendants cannot prove their affirmative defense or counterclaim. The Court prefers that cases be decided
5 on their merits, and because discovery is still on-going plaintiff will not be prejudiced by the amended answer.
6 Defendants' motion to amend their answer [Dkt. #29] is **GRANTED**. Defendants shall electronically file their
7 amended answer within five (5) days of entry of this Order.

8 **IT IS SO ORDERED.**

9 The Clerk shall send uncertified copies of this order to all counsel of record, and to any party appearing
10 pro se.

11 Dated this 14th day of September, 2007.

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13 
14 RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE